90-942

No.

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1990

JEROME B. ROSENTHAL,

Petitioner,

vs.

"JUSTICE DEFENDANTS", and
"ORGANIZATION DEFENDANTS"
(Full listing of all parties
appears in accompanying
Petition for Cert, p.vi)

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS,
FOR THE NINTH CIRCUIT

APPENDICES RE: PETITION FOR CERTIORARI

(Petition for Certiorari, in accompanying, separate volume)

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Petitioner, Pro Se

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LIST OF APPENDICES

No.	Description
1.	14th Amendment - U.S. Constitution
2.	6th Amendment - U.S. Constitution
3.	42 U.S.C. Section 1983
4.	(Intentionally omitted)
5.	U.S. Constitution, Article VI, Section 2
6.	Order, United States District Court dismissing FASC, November 21, 1988
7.	Opinion, U.S. Court of Appeals, Ninth Circuit, dated August 1, 1990
8.	Order, U.S. Court of Appeals, Ninth Circuit, September 10, 1990, Denying Petitioner's Petition for Rehearing
9.	29 U.S.C. Section 402(i)
10.	29 U.S.C. Section 411(a)(5)
11.	California Business and Professions Code, Section 6049.1
12.	California Business and Professions Code, Section 6083(c)
13.	California Rules of Court, Rule 955
14.	Order, U.S. Court of Appeals, April 1988
15.	First Amended and Supplemental Complaint (FASC)

LIST OF APPENDICES (Cont'd)

APPENDIX

No.	Description
1.	14th Amendment - U.S. Constitution

14th Amendment

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX

No.	Description
2.	6th Amendment - U.S. Constitution

6th AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

APPENDIX

No.	Description
3.	42 U.S.C. Section 1983

SECTION 1983. Civil Action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (As amended Dec. 29, 1979, P.L. 96-170, Section 1, 93 Stat. 1284).

APPENDIX

No.	Description
4.	(Intentionally omitted)

APPENDIX

No.	**Description**
5.	U.S. Constitution, Article VI, Section 2

U.S. Constitution, Article VI, Section 2

"2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

APPENDIX

No.	**Description**
6.	Order, United States District Court dismissing FASC, November 21, 1988

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Jerome B. Rosenthal Plaintiff, v. "Justice Defendants": Justices of the Supreme Court of California; "Organization Defendants": State Bar of California; Mary Wailes, Secretary, Terry Anderlini, President Defendants.	)	NO. C 87 3104 TEH ORDER

This Court issued an order in JULY 1987 DISMISSING ALL CLAIMS BROUGHT BY PLAINTIFF Rosenthal against the California Supreme Court for actions relating to his expulsion from the State Bar of California. A Ninth Circuit panel

affirmed the dismissal of all but one claim and remanded the case so that this Court could consider plaintiff's challenge to the constitutionality of Cal.Bus. and Prof. Code section 6083(c).

Plaintiff filed an amended complaint that raises three claims: First, Plaintiff alleges that Cal.Bus. and Prof. Code sections 6083(c) and 6049.1 are unconstitutional in that they, respectively, shift the burden of proof in a disbarment proceeding, and violate the confrontation clause. Plaintiff therefore seeks an injunction preventing the California Supreme Court from enforcing the order calling for his disbarment. This is the only one of plaintiff's claims which relates to the constitutionality of a state statute.

Second, plaintiff seeks damages from Chief Justice Malcolm Lucas of the California Supreme Court under 42 USC

Section 1983 for infringement of plaintiff's fourteenth amendment right to Due Process.

Third, plaintiff seeks reinstatement to the Bar, and compensatory and punitive damages from the "organization defendants", i.e., the State Bar of California and its President and Secretary for violation of the Labor Management Reporting and Disclosure Act, 29 USC Section 411(a)(5).

Claim One: A Challenge to the Constitutionality of Two Statutes

(1) Cal.Bus. and Prof. Code 6083(c)

A disciplinary decision of the State Bar of California may be appealed to the California Supreme Court pursuant to California Business and Professional Code Section 6083(c). That statute provides that, on appeal, the burden is on the petitioner to show wherein a decision

recommending suspension or disbarment is erroneous or unlawful. The California Supreme Court then independently examines the record, re-weighs the evidence, and rules on its sufficiency.

Plaintiff claims that Section 6083(c) violates the constitutional guarantee of due process because it shifts the burden of showing error onto the petitioner. Plaintiff would have this Court treat a disbarment proceeding as if it were a criminal prosecution, thus entitling him to the same panoply of procedural safeguards accorded criminal defendants.

In the absence of any statutory or case law characterizing a disbarment proceeding as a criminal matter, plaintiff argues that disbarment is "punitive" and therefore the equivalent of criminal prosecution for constitutional purposes. Plaintiff lacks all authority for that contention. While

courts, on occasion, may create judicial fictions, litigants may not. A disbarment proceeding "is neither civil nor criminal, but an investigation into the conduct of the lawyer/respondent." Middlesex County Ethics Committee v Garden State Bar Association, 457 U.S. 4223, 433 (1982).

Nevertheless, attorneys cannot summarily be stripped of their right to practice. Disbarment proceedings require procedural due process, including notice and an opportunity to be heard. In Re Ruffallo, 390 U.S. 544 (1967). However, plaintiff in no way alleges that he was denied procedural due process protections and, indeed, nothing in the provisions of the challenged statute denies these protections to plaintiff or to any other member of the Bar subject to discipline.

A disciplinary hearing before the State Bar is an adversary proceeding in

which the State Bar has the burden of establishing misconduct by convincing proof and to a reasonable certainty. Franklin v State Bar of California, 35 Cal.3d 274, 291 (1986). The California Supreme Court must decide independently whether the State Bar's findings are supported by the evidence and it will not consider the allegations proven unless sustained by clear and convincing evidence. Arden v. State Bar of California, 43 Cal.3d 713, 725 (1987). Accordingly, the Court finds that plaintiff's challenge to the constitutionality of Cal. Bus. and Prof. Code Section 6083(c) is without merit.

(2) Cal.Bus.and Prof. Code, Section 6091.1

Plaintiff challenges the constitutionality of Cal.Bus. and Prof. Code Section 6091.1 which allows the California State Bar to receive in

evidence findings, conclusions, and orders issued pursuant to other disciplinary proceedings involving the same attorney. It was undisputed that no record of other discipline was involved or introduced at plaintiff's disbarment hearing. Plaintiff's attempts to mischaracterize the facts and misquote the law are unavailing; he simply lacks all standing to challenge Section 6091.1.

Even if plaintiff had standing to challenge the statute, his challenge would be fruitless:

> It is settled that bar proceedings are not criminal in nature...Accordingly, particular procedural safeguards applicable in criminal and civil litigation are not required in disciplinary proceedings to insure a right to Due Process. Giovanazzi v. State Bar, 28 Cal.3d 465, 472 (1980).

It is also settled that federal courts may consider evidence of state

disciplinary proceedings and decide to discipline attorneys on the basis of that evidence. In Re Ruffallo, 390 U.S. at 550 (1968). Cal. Bus. and Prof. Code Section 6049.1 was enacted to allow the California State Bar similar access to other disciplinary proceedings. Rosenthal v. State Bar of California, 43 Cal.3d 612, 622 (1987). In addition, the statute states that the State Bar, like federal courts, must consider "whether the proceedings of the other jurisdiction lacked fundamental constitutional protection." For all the above reasons, the statute is not unconstitutional.

To the extent that plaintiff attacks the constitutionality of Cal.Bus. and Prof. Code Section 6049.2, the statute which allowed evidence pertaining to former tax and bankruptcy proceedings involving plaintiff to be admitted at his disciplinary hearing, he fails again.

Section 6049.2 meets the standards or procedural due process required in attorney disciplinary proceedings and, therefore, does not violate the Constitution.

Claim Two: Section 1983 Action for Damages Against Chief Justice Malcolm Lucas

In Claim Two, plaintiff seeks $7,250,000 from Chief Justice Malcolm Lucas for reasons that remain unclear. Plaintiff alleges that in early 1987, Chief Justice Lucas recused himself from participation in the Supreme Court review of plaintiff's State Bar disciplinary proceeding. Despite the recusal, Chief Justice Lucas signed an Order Denying Rehearing dated September 2, 1987.

To the extent that plaintiff's allegations state a cause of action at all, that action is defeated by the

doctrine of judicial immunity. As the United States Supreme Court stated:

> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 13 Wall 335, 20 L.Ed. 646 (1972). Pierson v. Ray, 386 U.S. 547, 554 (1967)

The Court in Pierson explicitly held that this settled principle of law was not abolished by Section 1983.

Plaintiff contends that Chief Justice Lucas is not protected by the doctrine of judicial immunity because the Chief Justice acted in the absence of all jurisdiction when he signed the order denying reconsideration. Plaintiff is wrong. By recusing himself from review of the State Bar proceeding, Chief Justice Lucas did not forfeit all his judicial powers. This Court finds, as a matter of law, that Chief Justice Lucas'

signing of the order denying reconsideration was an act within his judicial jurisdiction under Bradley v. Fisher.

Claim Three: Action for Damages Against State Bar for Violation of LMRDA

Plaintiff asserts that the State Bar is a labor organization within the meaning of 29 USC Section 402(i) and that the State Bar violated the Labor Management Reporting and Disclosure Act by recommending that he be disbarred. Plaintiff seeks reinstatement to the California Bar, compensatory and punitive damages, and an injunction prohibiting the State Bar defendants from interfering with his rights as a member and from violating 29 USC Section 411(a)(5).

Only by selectively and deceptively quoting the language of the LMRDA can plaintiff even begin to argue that the

State Bar is a labor organization within the meaning of the act. Section 402(i) of 29 USC states:

> "Labor organization" means a labor organization engaged in an industry affecting commerce...and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment...

In disciplinary proceedings such as the one at issue here, the State Bar acts as the administrative arm of the California Supreme Court. In no way does the Bar exist for the purpose of dealing with employers.

Therefore, this Court lacks subject matter jurisdiction to consider plaintiff's claim under LMRDA. Moreover, even if subject matter jurisdiction under LMRDA existed, plaintiff's claim for reinstatement to the State Bar and for damages because of his expulsion are barred because "federal courts do not

have jurisdiction to interfere with disciplinary proceedings of the State Bar of California." Doe v. State Bar of California, 415 F.Supp. 308, 312 (N.D. Cal. 1976), aff'd 582 F.2d 25 (9th Cir. 1978).

Conclusion

The complaint which ultimately led to Jerome Rosenthal's expulsion from the State Bar of California was lodged over twenty years ago. By misrepresenting facts and law, filibustering, and raising an unrelenting series of frivolous challenges to the order calling for his disbarment, plaintiff has managed to elude justice for over two decades. The game is up.

An attorney disciplinary proceeding is not a criminal prosecution. Cal. Bus. and Prof. Code Section 6083(c) and 6049(1) meet procedural due process

standards and are not unconstitutional. Plaintiff's claim against Chief Justice Malcolm Lucas of the California Supreme Court, to the extent that one exists, is barred by the doctrine of judicial immunity. The State Bar of California is not a labor union within the meaning of LMRDA and, moreover, this Court lacks the authority to interfere in state bar disciplinary proceedings. Accordingly, all three claims raised by plaintiff's amended complaint are hereby DISMISSED with prejudice.

IT IS SO ORDERED.

DATED: November 21, 1988

Thelton E. Henderson
United States District Court

APPENDIX

No.	Description
7.	Opinion, U.S. Court of Appeals, Ninth Circuit, dated August 1, 1990

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEROME B. ROSENTHAL, ESQ. Plaintiff-Appellant,	)
	) No. 88-15709
v.	)
	) D.C. NO
JUSTICES OF THE SUPREME COURT OF CALIFORNIA; ALLEN BROUSSARD; EDWARD PANELLI; JOHN A. ARGUELLES; DAVID N. EAGLESON; MILDRED LILLIE; VAINO SPENCER; MARCUS KAUFMAN,	) CV-87-3104-TEH) OPINION
DEFENDANTS-APPELLEES.	)

Appeal from the United States District Court for the Northern District of California, Thelton E. Henderson, District Judge, Presiding

Argued and Submitted

March 13, 1990 - San Francisco, California

Filed August 1, 1990

Before: Herbert Y. C. Choy, Thomas Tang and Robert R. Beezer, Circuit Judges

Opinion by Judge Beezer

SUMMARY

ATTORNEYS

Affirming the district court's judgment of dismissal, the court of appeals held because attorney disciplinary hearings are not criminal proceedings, the normal protections afforded a criminal defendant do not apply.

Appellant Jerome B. Rosenthal was disbarred by the California Supreme Court on the recommendation of the Hearing Panel of the California State Bar and its

Review Department. The recommendation was made after more than ten years of hearings and proceedings following a complaint filed against Rosenthal by a former client, Doris Day and her family. Rosenthal has been disbarred by the court of appeals and appeared before the court pro se. Rosenthal brought this action in federal court to allege constitutional and statutory defects in the state disbarment proceedings. The district court rejected Rosenthal's arguments and dismissed the claims with prejudice. Rosenthal appealed.

[1] Rosenthal argued that Cal.Bus. and Prof. Code Section 6083 which places upon the petitioner the burden of proving to the state Supreme Court that the bar association's recommendation of disbarment is erroneous, violates both the principle of presumption of innocence

and the command of the 14th amendment that the state prove every element of the crime beyond a reasonable doubt. [2] The court rejected Rosenthal's arguments. A lawyer disciplinary proceeding is not a criminal proceeding and as a result, normal protections afforded a criminal defendant do not apply. [3] The State of California provides attorneys subject to discipline with more than constitutionally sufficient procedural due process, and the court declined to hold the statute unconstitutional.

[4] Rosenthal also contended that Chief Justice Lucas, who recused himself from Rosenthal's case in the state Supreme Court, violated Rosenthal's constitutional rights by nevertheless signing on behalf of the court an order denying Rosenthal's petition for rehearing. To the extent that this was

error, it was harmless, for the entire state supreme court affirmed its decision in a second order signed by Acting Chief Justice Arguelles five months later.

[5] Finally, Rosenthal argued that the state bar itself violated federal law in conducting his disbarment proceedings. This claim was grounded in the Labor Management Reporting and Disclosure Act, 29 U.S.C. Section 402 et seq., which requires a labor organization to provide a full and fair hearing before it may discipline or expel a member. [6] Rosenthal argued that the state bar is a labor organization under the statute because it deals at least in part with employers. [7] The court concluded, however, that in carrying out its statutory responsibilities regarding attorney discipline, the California State Bar is not a labor organization under the LMRDA.

COUNSEL

Jerome B. Rosenthal, pro se, Los Angeles, California, for the plaintiff-appellant.

Daniel G. Stone and Cathy A. Neff, Deputy Attorneys General, Sacramento, California and Lawrence C. Yee, State Bar of California, San Francisco, California, for the defendants-appellees.

OPINION

BEEZER, Circuit Judge:

Rosenthal appeals the district court's dismissal of his action against the justices of the California Supreme Court and officers of the state bar associations arising our of his disbarment. We affirm.

Rosenthal was disbarred by the California Supreme Court on the recommendation of the Hearing Panel of the California State Bar and its Review Department. See Rosenthal v State Bar of California, 43 Cal.3d 612, 238 Cal.Rptr. 377, 738 P.2d 723 (1987) (en banc), appeal dismissed, 109 S.Ct. 35 (1988) (Rosenthal I). The recommendation was made after over ten years of hearings and proceedings following a complaint filed against Rosenthal by a former client, Doris Day, and her family. See id., 43 Cal.3d at 615-21, 238 Cal.Rptr. at 379-83. Rosenthal had represented Day and her husband, Martin Melcher, for 18 years, until Melcher's death in 1968. See Day v Rosenthal, 170 Cal.App. 3d 1125, 217 Cal.Rptr. 89 (App. Ct. 1985), cert. denied 475 U.S. 1048 (1986). During that period, Rosenthal committed

breaches of professional ethics that are difficult to exaggerate.[1] Rosenthal has

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[1] The California Supreme Court found that Rosenthal had among other things, (1) negotiated a retainer agreement giving him a 10% interest in everything the Melchers owned, above and beyond litigation fees; (2) set up oil and gas ventures that cost the Melchers over $4 million while netting Rosenthal $400,000 in secret profits and hundreds of thousands of dollars in legal fees; (3) set up sham tax shelters involving the purchase of bonds from other clients of Rosenthal, for which he received a commission without disclosing his conflict of interest, and provoking ten years of tax litigation during which he failed to communicate settlement offers; (4) set up hotel investment schemes toward which the Melchers made constant payments from which Rosenthal, as partial owner, siphoned funds; (5) failed to provide any accounting and convinced Melcher that an audit by Price, Waterhouse & Co. was inaccurate; and (6) convinced Melcher to take, without Day's knowledge or permission, nearly $3 million from Day's personal accounts to "loan" to family businesses that turned the money over to Rosenthal. During this period Rosenthal received over $2.5 million in legal fees. Day, 170 Cal.App. 3d at 1135-41, 217 Cal.Rptr. at 94-99. After Melcher's death, the scheme unraveled and Day fired Rosenthal. In response, Rosenthal filed at least 18 lawsuits against Day, id. at 1141, 98; and blocked efforts to salvage funds from the hotel bankruptcy proceedings, costing Day another half-million dollars. Id.

also been disbarred by this court and appears before us pro se. In re Rosenthal, 854 F.2d 1187, 1188 (9th Cir. 1988) (Rosenthal II).

Rosenthal brought this action in federal court to allege constitutional and statutory defects in the state disbarment proceedings.[2] First, he argues that the statute authorizing judicial review of the bar association's recommendation impermissibly shifts the

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When a receiver was appointed, Rosenthal not only refused to turn over documents and files but forced sheriff's deputies to call out a locksmith to gain access to the file room to obtain the Melcher/Day files. Id. Rosenthal did all this without ever considering his behavior inappropriate. Id. at 1141, 99.

[2] Rosenthal's original federal court complaint was dismissed, but on appeal we held that one of his constitutional claims had facial validity and remanded for a determination on the merits. No. 87-2418, Order dated April 29, 1988. On remand, the district court dismissed the amended complaint. This appeal followed.

burden to him to show the evidence is insufficient to support disbarment. See Cal. Bus. & Prof. Code Section 6083(c). Second, he argues that the statute authorizing admission of documents from other disciplinary proceedings violates the confrontation clause. See Cal. Bus. & Prof. Code Section 6049.1(a). Third, he alleges that Chief Justice Malcolm Lucas of the California Supreme Court, who had earlier recused himself from the case, acted without jurisdiction when he signed an order on behalf of the court denying Rosenthal's petition for rehearing, violating 42 U.S.C. Section 1983. Finally, he charges that the Bar Association violated federal labor law, specifically 29 U.S.C. Section 411(a)(5), by not providing him a "full and fair hearing."

The district court rejected these arguments and dismissed the claims with

prejudice. We review the district court's dismissal of a complaint de novo. Kruso v Int'l Telephone and Telegraph Corp., 872 F.2d 1416, 1421 (9th Cir. 1989).

I

[1] Rosenthal first argues that Cal. Bus. & Prof. Code Section 6083, which places upon the petitioner the burden to prove to the state Supreme Court that the bar association's recommendation of disbarment is erroneous, [3] principle of presumption of innocence and the command of the 14th Amendment that the state prove every element of an offense beyond

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[3] Cal. Bus. & Prof. Code Section 6083 reads:

> (a) A petition to review or to reverse or modify any decision recommending the disbarment or suspension from practice of a member of the State Bar may be filed with the Supreme Court....
>
> (c) Upon such review the burden is upon the petitioner to show wherein the decision or action is erroneous.

a reasonable doubt.

[2] We reject both of Rosenthal's attacks upon Section 6083(c). A lawyer disciplinary proceeding is not a criminal proceeding. See, e.g., Standing Comm. on Discipline v. Ross, 735 F.2d 1168, 1170 (9th Cir.), cert. denied, appeal dismissed, 469 U.S. 1081 (1984). As a result, normal protections afforded a criminal defendant do not apply. The principle of presumption of innocence is a creature of a criminal proceeding; and hence, does not apply in a lawyer disbarment proceeding. Similarly, Section 6083(c) does not violate the command of the 14th Amendment that the state prove every element of an offense beyond a reasonable doubt. That command, which arises from Sandstrom v Montana, 442 U.S. 510 (1975), applies only in criminal proceedings, not in a lawyer disbarment such as this one.

The lawyer subject to discipline is entitled to procedural due process, including notice and an opportunity to be heard. In re Ruffalo, 390 U.S. 544, 550 (1968); Ross, 735 F.2d at 1170. California provides this and other protections. It allows the lawyer to call witnesses and cross-examine them. Emslie v State Bar of California, 11 Cal.3d 210, 226, 113 Cal.Rptr. 175, 183-84, 520 P.2d 991 (1974) (en banc). At the hearing, the burden is on the state to establish culpability "by convincing proof and to a reasonable certainty"; "all reasonable doubts must be resolved in favor of the accused." Id.; see also Arden v. State Bar of Calif., 43 Cal.3d 713, 724, 239 Cal.Rptr. 68, 73, 739 P.2d 1236 (1987) (en banc). [4] The California

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[4] Rosenthal does not argue here that he was denied constitutional protections in his extensive hearings before the bar

Supreme Court, in deciding whether to accept the bar's recommendation, grants the bar's findings "great weight" but is not bound by them. Id. It must "independently examine the record, reweigh the evidence and pass on the sufficiency." Franklin v. State Bar of Calif., 41 Cal. 3d 700, 708, 224 Cal.Rptr. 738, 742, 715 P.2d 699 (1986) (en banc). Once again, "all reasonable doubts will be resolved in favor of the accused." Emslie, 11 Cal. 3d at 220, 113 Cal.Rptr. at 179. The petitioner need only show that the charges "are not

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association or that the burden of proof was wrongly allotted there. Indeed, he raised such arguments before the California Supreme Court, which rejected them as "completely meritless" and "technical defenses devoid of any sincere discussion of the merits of the serious findings against him." Rosenthal I, 43 Cal.3d at 632-33, 238 Cal.Rptr. at 390-91. We have also rejected Rosenthal's challenges to the bar's conduct of the hearings in affirming his disbarment from this court. Rosenthal II, 854 F.2d at 1188.

sustained by convincing proof and to a reasonable certainty." Id.

[3] The State of California provides attorneys subject to discipline with more than constitutionally sufficient procedural due process. We decline to hold this statute unconstitutional.

II

Rosenthal next argues that the California statute authorizing admission of documents from other disciplinary proceedings violates the confrontation clause. Cal. Bus. & Prof. Code Section 6049.1(a) provides:

> In any disciplinary proceeding under this Chapter, a certified copy of a final order made by any court of record...determining that a member of the State Bar

> committed professional misconduct...shall be conclusive evidence that the member is culpable of professional misconduct in this state...

At the time the proceeding against Rosenthal was commenced, the statute provided that:

> authenticated copies of findings, conclusions, orders or judgments made or entered in any court of record...in any disciplinary proceeding therein against the same person, shall be admissible...

The former statute also allowed admission of the "authenticated transcript of the testimony taken in...out-of-state proceedings." Id. Rosenthal argues that these provisions deny him the right to cross-examine witnesses from other proceedings and violate the sixth amendment.

The state court decision in this

matter shows that Rosenthal had no prior record of discipline. See Rosenthal I, 43 Cal. 3d at 621, 238 Cal. Rptr. at 383. Rosenthal denies no record of a disciplinary proceeding against him that was admitted at his hearing. He points to the findings of a bankruptcy court that were admitted over his objections, arguing that because they were findings they fall under Section 6049.1. The findings were, however, admitted under a different statute, namely Cal.Bus. & Prof. Code Section 6049.2. See Rosenthal I, 43 Cal.3d at 633, 238 Cal.Rptr. at 391. Rosenthal's challenge to that statute was rejected by the California Supreme Court because he was a party to all the underlying proceedings and had a full opportunity to cross-examine adverse witnesses there. Id. He does not challenge Section 6049.2 here.

We reject Rosenthal's confrontation clause claim. The confrontation clause is a criminal law protection. Therefore, it does not apply to a disbarment case. In any event, we agree with the district court that Rosenthal has shown no "injury in fact," much less a "concrete and particularized one," flowing from application of Section 6049.1, the statute he challenges in this action. He fails to meet even the threshold test of standing to raise this claim. Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 79-80 (1978).

III

[4] Rosenthal next argues that Chief Justice Lucas, who recused himself from Rosenthal's case in the California Supreme Court, violate Rosenthal's constitutional rights by nevertheless signing on behalf of the court an order denying Rosenthal's petition for

rehearing. To the extent this was error, it was harmless, for the entire state supreme court affirmed its decision in a second order signed by Acting Chief Justice Arguelles five months later. The second order specified that the decision to deny Rosenthal's petition for rehearing was unopposed. Furthermore, even if the order signed by Chief Justice Lucas were void, see Giometti v Etienne, 28 P.2d 913, 914 (Cal. 1934), rehearing would automatically have been denied when the time for granting Rosenthal's petition expired on September 11, 1987.

Any injury to Rosenthal caused by Chief Justice Lucas' signing of the order was cured by the later order. But even if it were not, and the Chief Justice acted in excess of his jurisdiction, we agree with the district court that he remained immune from suit. A judge is

immune from suit under 42 U.S.C. Section 1983 for acts in excess of his jurisdiction, so long as the acts themselves were judicial. Stump v Sparkman, 435 U.S. 349, 355-57, 363 n. 12 (1978); Bradley v Fisher, 80 U.S. (13 Wall) 335, 351 (1971); cf. Forrester v White, 108 S.Ct. 538, 544 (1988) (administrative functions not judicial acts); Gregory v Thompson, 500 F.2d 59, 63-64 (9th Cir. 1974) (physical assault on person in courtroom not judicial act). The scope of a judge's jurisdiction will be construed broadly. Stump, 435 U.S. at 363. The signing of this order was manifestly a judicial act and this claim was properly dismissed.

IV

[5] Finally, Rosenthal argues that the state bar itself violated federal law in conducting his disbarment proceedings. This claim is grounded in the Labor

Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. Section 402, et seq., which requires a "labor organization" to provide a "full and fair hearing" before it may discipline or expel a member. 29 U.S.C. Section 411(a)(5).

A "labor organization" is defined by the statute as either "the certified representative of employees" or an organization "recognized as acting as the representative of employees," 29 U.S.C. Sections 402(j)(1),(2), which "exists for the purpose, in whole or in part, of dealing with employers" 29 U.S.C. Section 402(i). Such an organization must, among other things, report annually to the Secretary of Labor. 29 U.S.C. Section 431.

[6] Rosenthal argues that the state

bar is a "labor organization" under the statute because it deals at least in part with "employers." He directs us to no case supporting his proposition and we are aware of none. The Supreme Court has recognized a "substantial analogy" between the California State Bar and a labor union for first amendment purposes. See Keller v. State Bar of California, 58 U.S.L.W. 4661, 4663 (U.S. June 4, 1990) (No. 88-1905) (Keller II). This analogy does not establish that the bar association is a labor union. On the contrary, substantial differences remain. The California State Bar is created by state law "to regulate the State's legal profession" and "improv[e] the quality of legal services." Id. at 4661, 4664. A labor union is organized primarily to conduct collective bargaining with management, a benefit bar members do not enjoy. Id. at 4663-064. See also

Lathrop v. Donohue, 367 U.S. 820, 842-43, 848 (1961) (opinion of Brennan, J.); id. at 849 (Harlan, J., concurring) (noting similarities in legislative activities and public interest justifications).

Other federal courts have recognized that the two types of organizations raise similar membership and first amendment issues, but otherwise involve different areas of the law. See Levine v Heffernan, 864 F.2d 457, 461 (7th Cir. 1988) (district court was "forced to analogize the integrated bar to the union shop" which was "not...the identical area of the law"), cert. denied, 110 S.Ct. 204 (1989); Gibson v. The Florida Bar, 798 F.2d 1564, 1568 (11th Cir. 1986); Arrow v Dow, 544 F.Supp. 458, 460 (D. N.M. 1982). State courts have come to the same conclusion. See Falk v. State Bar of Michigan, 418 Mich. 270, 342 N.W.2d 504,

514 (1983); Sams v. Olah, 225 Ga. 497, 169 S.E.2d 790, 799 (1969) (under state right to work act, state bar "is not a labor organization, the lawyer is not an employee, nor is the client an employer"); In re Integrating the Bar, 222 Ark. 35, 259 S.W. 2d 144, 151 (1953) (bar does not represent lawyers regarding wages or working conditions "and bargains with no one").

[7] In recommending disbarment, the bar association is not a private organization disciplining its members, but an "administrative arm" of the state Supreme Court designed to assist its decisionmaking. See Chaney, 386 F.2d at 966. Final authority for disbarment rests not with the bar but with the state Supreme Court. Keller II, 58 U.S.L.W. at 4663. For this and other reasons, the California state bar is established by

the legislature, holds public meetings, and is governed at least in part by persons appointed by the governor who are not bar members. See Keller v. State Bar of California, 47 Cal.3d 1152, 255 Cal.Rptr. 542, 548, 767 P.2d 1020 (en banc) (Keller I), rev'd on other grounds, 58 U.S.L.W. 4661 (U.S. June 4, 1990) (No. 88-1905). We conclude that in carrying out its statutory responsibilities regarding attorney discipline, the California State Bar is not a "labor organization" under the LMRDA.

The district court also concluded that, to the extent Rosenthal challenges the fairness of the hearings, they have already been reviewed by the California Supreme Court. That court has concluded that the bar's recommendation was proper. Only the United States Supreme Court, and not this court, has jurisdiction to look behind that decision. District of

Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 482 (1983); Doe v. State Bar of California, 415 F. Supp. 308, 312 (N.D. Cal. 1976), aff'd, 582 F.2d 25 (9th Cir. 1978).

V

We hold that the district court correctly dismissed Rosenthal's claims. The judgment of the district court is

AFFIRMED.

APPENDIX

No.	Description
8.	Order, U.S. Court of Appeals, Ninth Circuit, September 10, 1990, Denying Petitioner's Petition for Rehearing

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEROME B. ROSENTHAL, Esq., Plaintiff-Appellant, v. JUSTICES OF THE SUPREME COURT OF CALIFORNIA; ALLEN BROUSSARD; EDWARD PANELLI; JOHN A. ARGUELLES; DAVID N. EAGLESON; MILDRED LILLIE; VAINO SPENCER; MARCUS KAUFMAN, Defendants-Appellees.	C.A. No. 88-15709 D.C. No. CV-87-3104-TEH ORDER

Before: CHOY, TANG and BEEZER, Circuit Judge:

Appellant's petition for rehearing is denied.

APPENDIX

No.	Description
9.	29 U.S.C. Section 402(i)

29 U.S.C. Section 402(i)

Section 402. Definitions.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

APPENDIX

No.	Description
10.	29 U.S.C. Section 411(a)(5)

29. U.S.C. Section 411(a)(5)

(a)(5) Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

APPENDIX

No.	Description
11.	California Business and Professions Code, Section 6049.1

BUSINESS AND PROFESSIONS CODE

SECTION 6049.1

"Section 6049.1 Records and transcripts in disciplinary proceedings as evidence.

In all disciplinary proceedings in this State, certified or duly authenticated copies of findings, conclusions, orders or judgments made or entered in any court of record, or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys, of the United States, or of any State or Territory of the United States or of the District of Columbia in any disciplinary proceeding therein against the same person, shall be admissible in evidence, and so far as relevant and material shall be prima facie evidence of the facts, matters and

things set forth therein."

The duly authenticated transcript of the testimony taken in such out-of-state proceedings shall be admissible in evidence in any disciplinary proceeding against the same person in this State.

APPENDIX

No.	Description
12.	California Business and Professions Code, Section 6083(c)

Cal. Bus. & Prof. Code Section 6083 reads:

> "(a) A petition to review or to reverse or modify any decision recommending the disbarment or suspension from practice of a member of the State Bar may be filed with the Supreme Court by the member within 60 days after the filing of the decision recommending such discipline.
>
> (b) A petition to review or to reverse or modify any decision reproving a member of the State Bar, or any action enrolling him as an inactive member pursuant to Section 6007 of this code or refusing to restore him to active membership, pursuant to such section may be filed

with the Supreme Court by the member within 60 days after service upon him of notice of such decision or action.

(c) Upon such review the burden is upon the petitioner to show wherein the decision or action is erroneous or unlawful."

APPENDIX

No.	Description
13.	California Rules of Court, Rule 955

Rule 955. Duties of Disbarred, Resigned or Suspended Attorneys

"(a) [Disbarment, Suspension and Resignation Orders] The Supreme Court may include in an order disbarring or suspending an attorney or accepting his resignation a direction that the attorney shall, within such time limit as the Court may prescribe, (1) notify all clients being represented in pending matters and any co-counsel of his disbarment, suspension or resignation and his consequent disqualifications to act as an attorney after the effective date of his disbarment, suspension or resignation, and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys in his place, (2) deliver to

all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining, calling attention to any urgency for obtaining the papers or other property, (3) refund any part of any fees paid in advance that have not been earned, and (4) notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties or his disbarment, suspension or resignation and his consequent disqualification to act as an attorney after the effective date of his disbarment, suspension or resignation, and file a copy of the notice with the court, agency or tribunal before which the litigation is pending for inclusion in the respective file or

files."

"(b) [Notices to Clients, Co-Counsel, Opposing Counsel and Adverse Parties] All notices required by an order of the Supreme Court pursuant to this rule shall be given by registered or certified mail, return receipt requested, and shall contain an address where communications may thereafter be directed to the disbarred, suspended or resigned attorney."

"(c) **[Filing Proof of Compliance]** Within such time limit as the Court may prescribe after the effective date of the disbarment or suspension order or the order accepting the resignation, the disbarred, suspended, or resigned attorney shall file with the Clerk of the Supreme Court, with proof of service of a copy on The State Bar **at** its San Francisco office, an affidavit showing that he has fully complied with those

provisions of the order entered pursuant to this rule. Such affidavit shall also set forth an address where communications may thereafter be directed to the disbarred, suspended, or resigned attorney.

"(d) [**Required Records**] A disbarred, suspended or resigned attorney shall keep and maintain records of the various steps taken by him under the disbarment or suspension order or the order accepting his resignation so that, upon any subsequent proceeding instituted by or against him, proof of compliance with the order will be available for receipt in evidence."

"(e) [**Sanctions for Failure to Comply**] A disbarred or resigned attorney's wilful failure to comply with the provisions of this rule constitutes a ground for denying his application for reinstatement or readmission. A

suspended attorney's wilful failure to comply with the provisions of this rule constitutes a cause for his disbarment or suspension and for revocation of any probation then pending. Additionally, the Supreme Court may punish such wilful failure by exercise of its contempt power.

Adopted by the Supreme Court of California, effective April 4, 1973."

APPENDIX

No.	Description
14.	Order, U.S. Court of Appeals, April 1988

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEROME B. ROSENTHAL, ESQ. Plaintiff-Appellant,	)
v.	) No. 87-2481
	) D.C. NO
JUSTICES OF THE SUPREME COURT OF CALIFORNIA; ALLEN BROUSSARD; EDWARD PANELLI; JOHN A. ARGUELLES; DAVID N. EAGLESON; MILDRED LILLIE; VAINO SPENCER; MARCUS KAUFMAN,	) CV-87-3104-TEH) Northern) California) (San) Francisco)) ORDER
DEFENDANTS-APPELLEES.	)

Before: GOODWIN, SCHROEDER and PREGERSON, Circuit Judges

The district court dismissed appellant's complaint with prejudice on the ground that "[j]udges are [absolutely] immune from liability for actions under 42 U.S.C. Section 1983." Dismissal was improper on this ground because, although judges are absolutely immune from damages liability, Pierson v

Ray, 386 U.S. 547 (1969), this court has previously held that the immunity accorded parties in the exercise of judicial functions is limited to actions for damages and does not extend to suits for injunctive relief. Shipp v Todd, 568 F.2d 133, 134 (9th Cir. 1978); see Supreme Court of Virginia v Consumers Union, 446 U.S. 719, 735-36 (1980).

This Court may affirm on any ground in the record. Jacobson v Tahoe Regional Planning Agency, 566 F.2d 1353, 1361 and n. 14 (9th Cir. 1977). With the exception of the constitutional challenge to Cal. Bus. & Prof. Code Section 6083(c) (Deering 1976), Rosenthal's complaint sought collateral review of his particular disbarment proceeding. A federal district court has no authority to review final judgments resulting from a state court judicial proceeding; review must be sought in the United States

Supreme Court. 28 U.S.C. Section 1257; District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 476, 482 (1983). Therefore, dismissal of all but one claim of the complaint is affirmed on the ground that the district court lacked subject matter jurisdiction over the complaint.

However, to the extent that Rosenthal's complaint presents a facial challenge to the constitutionality of Section 6083(c) requiring the district court to independently assess the validity of the rule, rather than review the final judgment of the state court, the court had subject matter jurisdiction over the complaint. See id. at 486-88. Therefore, we reverse the district court's decision and remand the case for proceedings consistent with this order. See id.

APPENDIX

No.	Description
15.	First Amended and Supplemental Complaint (FASC)

JEROME B. ROSENTHAL
6535 Wilshire Boule[illegible]
Suite 800
Los Angeles, California 90048
(213) 658-6411

Plaintiff, Pro Se

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEROME B. ROSENTHAL,	)
	)Case No.
Plaintiff,	)C87-3104 TEH
	)
vs.	)FIRST AMENDED AND
	)SUPPLEMENTAL
"JUSTICE DEFENDANTS":	)COMPLAINT FOR
JUSTICES OF THE	)RESTRAINT AND
SUPREME COURT OF	)INJUNCTIONS; FOR
CALIFORNIA, ALLEN	)DETERMINATION OF
BROUSSARD, ACTING CHIEF	)FEDERAL
JUSTICE; AND HONORABLE	)UNCONSTITUT-
EDWARD PANELLI,	)IONALITY OF STATE
HONORABLE JOHN A.	)STATUTE (CLAIM
ARGUELLES, HONORABLE	)ONE); FOR DAMAGES
DAVID N. EAGLESON,	)AGAINST ONE
HONORABLE MILDRED	)DEFENDANT ONLY
LILLIE, HONORABLE	)(CLAIM TWO);
VAINO SPENCER,	) LMRDA 29 U.S.C.
HONORABLE MARCUS	)185(C)(2),411(a)
KAUFMAN, JUSTICES;	)(1)(5)(A)(B)(C),
MALCOLM M. LUCAS,	)412 (CLAIM THREE)
CHIEF JUSTICE;	)
	)(JURY DEMANDED
"ORGANIZATION	) AS TO CLAIMS TWO
DEFENDANTS":	) AND THREE ONLY)
STATE BAR OF CALIFORNIA)	

MARY WAILES, AS SECRETARY OF STATE BAR OF CALIFORNIA; TERRY ANDERLINI, AS PRESIDENT OF STATE BAR OF CALIFORNIA,

Defendants.

GENERAL ALLEGATIONS AS TO CLAIM ONE, TWO & THREE

I

JURISDICTION

1. This Court's jurisdiction arises under Section 1331 of Title 28, United States Code (as to Claims One and Two), 1343(3)(4) of Title 28, United States Code (as to Claims One and Two); Section 2201 of Title 28, United States Code, FRCP 65 (as to Claim One); Section 411(a)(1), (5)(A)(B)(C), 412 of Title 29, United States Code (as to Claim Three); Section 185(c)(2) of Title 29, United States Code (as to Claim Three), FRCP

8(a) (as to Claim Three, 65 (as to Claim One).

2. Plaintiff brings this action under the provisions of Section 1983 et seq. of Title 42, United States Code, the 14th Amendment to the Constitution of the United States, all as to Claims One and Two. Claim Three arises under the LMRDA [29 United States Code Sections 411(a)(1)(5)(A)(B)(C), 412 and 185(c)(2)].

VENUE

3. This action is brought in the Northern District of California, which is the principal place where Defendants perform their (its) duties, i.e., San Francisco, California.

PARTIES

4. Plaintiff was admitted to the practice of law by the Supreme Court of the State of California on or about June 11, 1946; further events concerning

plaintiff's status are detailed below.

5. Claim One Defendants are now or at all relevant times were a Justice or an Acting Justice of the Supreme Court of the State of California. Claim Two Defendant is and was at all relevant times the Chief Justice of the Supreme Court of California. Claim Three Defendants are the State Bar of California, Mary Wailes, as its Secretary and Terry Anderlini, as its President.

CLAIM ONE - FOR INJUNCTIVE RELIEF

(Against All Justices and Acting Justices of California Supreme Court)

6. In the certain proceedings (herein sometimes "the disciplinary proceedings"), reviewed and adopted by the California Supreme Court (therein designated and numbered as Bar Misc. No. 5256; 72-0-000 1 LA (LA 2235); and LA 32260 Rosenthal v. State Bar of California, Defendants have deprived in

the past, and threaten to continue to deprive plaintiff of his federal civil rights and federal constitutional rights by utilizing unconstitutional statutes (detailed below), including due process and other rights as guaranteed by the 14th Amendment to the Federal Constitution.

7. In disciplinary cases, these Defendants uniformly act and (except for Lucas) in this case, acted as fact-finders, de novo and make (made) their independent evidentiary determination of disbarment (of Plaintiff) based upon the federally unconstitutional statute, i.e. Section 6083(c) of California Business and Professions Code. That statute unconstitutionally shifts the burden to the accused to prove his/her innocence. See Miller v Norvell (1985) 11 Cir; 775 F.2d 1572, 1576, cert. denied (1986) 90 L.Ed.2d 675; Sandstrom v Montana (1975)

442 U.S. 510, 61 L.Ed. 2d 39; Connecticut v Johnson (1983) 460 U.S. 73, 74 L.Ed.2d 823.

8. The acts threatened by Defendants include, but are not limited to, the enforcement, consistent with their established custom and usage, of Rule 955 Cal. Rules of Court, as follows:

(a) Based upon a facially unconstitutional Statute, i.e., Cal. Business and Professions Code Section 6083(c) which shifts the burden of proof to accused Plaintiff on question of innocence. Casting of that burden upon Plaintiff to overthrow the presumption of intentional wrongdoing embodied in that Statute is unconstitutional, in that it requires Plaintiff to overcome a presumption of intentional

wrongdoing or guilt, rather than leaving the burden on the accuser and the Defendants to prove the intentional wrongdoing of Plaintiff (accused), as charged. This threatened action, which is ongoing, continuing and prospective, is further exacerbated by policy of Defendants, acting as Supreme Court, to follow and apply the provisions of Section 6083(c) which is a codified and unconstitutional presumption of intentional wrongdoing. That presumption shifts the burden of proof on the issue of intent, and therefore violates Plaintiff's constitutional rights guaranteeing him due process under the Fourteenth Amendment, and as further

enunciated in Miller v Norvell, in Sandstrom v Montana, and in Connecticut v Johnson, supra.

(c) Based upon another facially unconstitutional California statute, Business and Professional Code Section 6049.1, the relevant portion of which reads: "In all disciplinary proceedings in this state...conclusions, orders or judgments made or entered in any court of record...shall be admissible in evidence..." The carte blanche admission of opinions, conclusions, and findings of such courts of record into disciplinary proceeding evidence is a denial of due process rights (e.g. confrontation, cross-examination) under the 14th

Amendment. See Berger v California (1969) 393 U.S. 314, 89 S.Ct. 540. See also Gerstein v Pugh (1975) 420 U.S. 103; 95 S.Ct. 854, 43 L.Ed.2d 54, which involved a judgment against state-court judges and a prosecuting official declaring unconstitutional and enjoining the enforcement of certain state statutes. The prosecutor brought the case to the United States Supreme Court, which affirmed the declaration that the Florida procedures at issue were unconstitutional, and held that Younger v Harris (1971) 401 U.S. 37, 56, 57, 27 L.Ed.2d 669, did not bar injunctive relief.

9. The threatened, actual and immediate prospective permanent harm and injury to Plaintiff cannot be adequately

redressed or prevented by an action of law, since the Defendants herein, inter alia, will (unless prevented from doing so by this Court) apply the burden shifting statute B & P 6083(c) and the non-confrontation statute (6049.1) (which are facially unconstitutional in themselves) against Plaintiff, by the threatened acts of enforcement of Defendants' purported disbarment order, including those set forth in the introductory portion of paragraph 8 hereof. As presently threatened, such enforcement (of California Rules of Court, Rule 955) against Plaintiff constitutes the threat of immediate harm in that the final conclusion and action of Defendants is not only threatened and imminent, but also is ongoing and prospective; and the jeopardy springing from such enforcement increases and continues to increase the irreparability

to which the Plaintiff is subjected and will be subjected.

10. In this action Plaintiff does not seek any review, appeal or quasi-appeal of or from, respectively, any final act or decision of the Justice Defendants (whether acting collectively as the California Supreme Court, or otherwise). Instead, Plaintiff seeks (in Claim One hereof) only to enjoin and prevent Defendants from enforcing, as threatened, (by requiring compliance with Rule 955 and otherwise and by threatening to find and punish Plaintiff for contempt) the unconstitutional consequence arising from the Defendants' following of the facially unconstitutional statutes (Sections 6083(c) or 6049.1 of the California Business and Professions Code).

The foregoing allegations in this paragraph 10 constitute these well-

established exceptions to the abstention doctrine of Younger: bad faith, initiating conduct and prosecution of proceedings; harassing and continuing to harass Plaintiff; unusual circumstances calling for equitable relief; and consequent, continuing, ongoing and threatened irreparable injury to Plaintiff.

11. Plaintiff, in the above Claim One of this Complaint:

(a) has no other adequate means to attain the necessary and desired relief, except as sought herein;

(b) will be damaged and prejudiced in a way not correctable on appeal in that without granting of relief by this Court, Plaintiff will be increasingly and continually irreparably injured (health,

livelihood, standing) each day that sought relief (herein) goes ungranted;

(c) has really suffered and continues to suffer from the often-repeated error of failing to distinguish equitable situations, from damage situations for purposes of applying judicial immunity principles; and

(d) raises important issue of first impression, in attacking the unconstitutionality of California Statutes (Bus. & Prof. Code Sections 6083(c) and 6049.1 thereof); California Supreme Court has ignored Plaintiff's constitutional attacks and has not previously entertained or ruled upon them.

12. Temporary or permanent restraint

or injunction are here appropriate, if not mandated, when this complaint is measured by (contrasted with) the standards articulated in Artukovic v Rison) (1986) 784 F.2d 1354, (CCA. 9), as follows:

(a) Artukovic showed no probability of success on the merits, while Plaintiff has irrefutably demonstrated an extremely high probability of success in the allegations of this complaint;

(b) While Artukovic presented no serious legal questions, Plaintiff herein has alleged facts which entail profound federal and federal constitutional legal questions of great magnitude and seriousness; and

(c) While Artukovic was not being subjected to any hardship

because he had an alternative forum available, Plaintiff here requires the intervention of the federal system for the enforcement of his federal rights, to prevent the exacerbation and continuation of the profound hardships suffered, threatened and ongoing as to Plaintiff. Not only is the severe hardship of Plaintiff indisputable, but there is no cognizable public interest in jeopardy if relief is granted, while Plaintiff's hardships are and will be ruinous, and unnecessary, if equitable relief is not granted.

CLAIM TWO - FOR DAMAGES

(Against Defendant Malcolm M. Lucas Only)

13. Plaintiff was admitted to practice before the Supreme Court of the

State of California, and thus to practice law in the State of California, on or about June 11, 1946; at all pertinent times, as explained more fully below, Plaintiff was thus admitted and did thus practice.

14. Defendant Lucas at all pertinent times referred to herein, was (except as otherwise stated below) and now is the Chief Justice of the California Supreme Court.

15. On April 29, 1987 Defendant Malcolm Lucas recused himself as disqualified from further participation in the proceeding (review) of State Bar recommended disbarment of Plaintiff then before the California Supreme Court.

On July 13, 1987, Defendants (all except Defendant Lucas) adopted State Bar's recommended disbarment of Plaintiff and ordered (herein "disbarment order") that Plaintiff comply with Rule

955 (California Rules of Court) by prospectively performing the provisions of subdivisions (a) and (c) of Rule 955.

On September 2, 1987, Defendant Lucas notwithstanding his disqualification and his total lack and absence of any jurisdiction, intentionally and maliciously signed an order denying Plaintiff's petition for rehearing of the disbarment order.

On February 13, 1988 Defendant Arguelles, acting in bad faith and to harass Plaintiff, signed an Order purporting and attempting to support the unlawful act of co-defendant Lucas, by fabricating and manufacturing a retroactive Order which has the effect of depriving Plaintiff of his federal constitutional right to an appeal.

16. Notwithstanding his disqualification and in strict violation thereof, functioning and acting in total

absence of any jurisdiction whatsoever, Defendant Lucas on September 2, 1987, intentionally, fraudulently, deliberately and with the malice aforethought signed, as or purporting to act as "Chief Justice", an Order (purported Order) of and in the Supreme Court of the State of California in bank (sic), denying Plaintiff's petition for rehearing. That Order read as follows:

"Petition for rehearing DENIED."

and was signed "Lucas, Chief Justice." In signing that Order and thus participating in the proceedings in which Defendant Lucas had been ordered to refrain from any participation, Defendant Lucas acted and functioned in the clear absence of all jurisdiction, and without any jurisdiction whatsoever, and without any right to the defense of judicial immunity. Please see Forrester v White (1988) 484 U.S. ____; 96 L.Ed.2d 555, 108

S.Ct.___.

17. As a direct and proximate result of the egregious acts of Defendant Lucas as hereinabove set forth, Plaintiff has suffered and continues to suffer and will continue to suffer for an indeterminate period in the future, severe emotional distress and physical pain arising from and associated with Plaintiff's embarrassment, humiliation, his being subjected to orders of courts requiring him to be disqualified from further representation of clients and pending causes, and further associated with his being charged with misdemeanors, threatened with incarceration, and the loss of his right to pursue his livelihood.

The aforesaid deliberate acts of Defendant Lucas were deliberate, wanton, and done with the knowledge that his such acts would invoke or cause the emotional

distress and physical pain to Plaintiff, or with conscious disregard for such likelihood or certainty, with oppressiveness and malicious motive on the part of said Defendant Lucas, so that Plaintiff is entitled to punitive damages.

18. Said actions on the part of Defendant Lucas were committed by him under color of state law, custom, or usage, and caused Plaintiff to be deprived of rights and privileges secured by the Federal Constitution (due process rights) and laws, all in violation of the Civil Rights Act, 42 USC Section 1983; plaintiff is also entitled to attorney's fees in an award against Defendant Lucas, by reason of said acts of Defendant Lucas, pursuant to said Civil Rights Act, Section 1988 thereof. See Aware Woman v Cocoa Beach (1980) CA 5, 629 F.2d 1146.

CLAIM THREE - FOR REINSTATEMENT,

INJUNCTIVE, AND COMPENSATORY AND PUNITIVE DAMAGES

(Against "Organization Defendants": State Bar of California (State Bar); Mary Wailes, as Secretary of State Bar of California; Terry Anderlini, as President of State Bar of California)

19. Plaintiff, a resident of the State of California, brings this action under, and jurisdiction is conferred on this Court by the provisions of Title 29, U.S. Code, Sections 411(a)(1)(5)(A)(B)(C), 412 and 185 (c)(2), "LMRDA."

20. At all times hereinafter mentioned, Plaintiff was (and a dispute exists as to whether he still is a member of the Organization Defendant, State Bar of California, an organization of independent contractor-lawyers, the State Bar of California is herein referred to as "Defendant Organization".

21. The principal office of Defendant Organization is located in San Francisco, California. The violations of the LMRDA hereinafter alleged occurred in California, within the territorial jurisdiction of this Court.

22. Defendant Organization is a "labor organization" within Section 402 of Title 29, U.S.C.S., subdivision (i) thereof, which reads: "'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind...", and is engaged in an industry affecting commerce within the meaning of the LMRDA.

23. Organization Defendants Mary Wailes and Terry Anderlini are, respectively, the Secretary and the President of Defendant Organization and reside within the territorial jurisdiction of this Court.

24. In May, 1986, Plaintiff was notified by Organization Defendant (Review Department) that Organization Defendant unanimously recommended expelling (from membership in Organization Defendant), in direct violation of Plaintiff's rights to a full and fair hearing under Section 411(a)(5) of the LMRDA, in the following particulars:

(a) Organization Defendants deprived Plaintiff of the opportunity to present testimonial and documentary evidence, and required him to bear the burden of showing that he lacked intent to commit the alleged wrongs for which he was expelled as a member of the Organization Defendant;

(b) Organization Defendants intentionally, deliberately and maliciously caused a delay of 18 years, 15 years, and possibly years (various

alternative interpretative possibilities, within these three periods of time) in the conduct of the proceedings which culminated in Plaintiff's expulsion by the Organization Defendants;

(c) Organization Defendants permitted its representative who sought to expel Plaintiff member, from one and one-half years within which to review evidence and summarize it in a brief, while according to Plaintiff only four months within which to do the same;

(d) Organization Defendant(s) considered and allowed its "decision makers" to see, examine and inspect, along with its representatives, a certain secret writing, but refused to permit Plaintiff to see or examine that writing, although the writing bore upon the charges resulting in the expulsion of Plaintiff from membership;

(e) Organization Defendant(s)

called and used witnesses against Plaintiff without restraint, used evidence which was unlawful in nature against Plaintiff, while at the same time refusing to permit Plaintiff to cross-examine witnesses, or to bring his own witnesses, and refusing to issue subpoenas for witnesses and for documents or issued such subpoenas and then failed to enforce them, thus again depriving Plaintiff of a full and fair hearing by depriving him of equal opportunity to present witnesses and evidence in his defense;

(f) During the disciplinary proceedings (sometimes herein "trial") of Plaintiff on the charges, which trial was conducted by and under the auspices of Organization Defendant, from virtually the inception of such trial continued to assure and promise to Plaintiff to present evidence, to cross-examine

witnesses, to call witnesses, and then, without any statement of reason or ground therefor, reversed and repudiated those promises, reversed themselves and literally prevented Plaintiff from doing the very things that Organization Defendant (through its representatives, of course) had been promising Plaintiff throughout the very proceedings, on which promises and assurances Plaintiff detrimentally relied;

(g) Organization Defendants, acting through their representatives, at trial-like proceedings promised and agreed with Plaintiff that in the future the trial board of Organization Defendant would not read, see, use or admit into evidence certain hearsay evidence, but rather would present (in advance to Plaintiff) certain potentially non-hearsay portions for advance approval or objection. Later Organization Defendants

directly violated those very promises irreparably, by accepting and admitting into evidence hearsay and other unlawful evidence, without giving Plaintiff any right to read, see and approve or object, whether in advance or otherwise. By way of illustration, even though certain witnesses were readily available to Organization Defendant and its trial-like body, those available witnesses were not called or used by Organization Defendant (in asserting its accusations which resulted in the expulsion of Plaintiff), but rather the unlawful evidence described above was admitted into evidence and used by the Organization Defendant, instead of the testimony of the available witnesses, thus depriving Plaintiff of his full and fair hearing rights, particularly those portions inherent in his right to confront, cross-examine, and produce witnesses;

(h) Organization Defendants, particularly its trial-like hearing officials and its prosecutor-like representative, made a determination which resulted in the expulsion of Plaintiff as a member, that Plaintiff was guilty of certain wrongdoing, although no notice of any kind whatsoever had been given to Plaintiff by Organization Defendant and any of its officials, agents, or representatives, of the nature of the charges or accusations to be made against him. As to those "uncharged offenses" of which the Plaintiff was in essence "found guilty", the Organization Defendant thus deprived Plaintiff of his "full and fair hearing" opportunity to prepare witnesses and evidence in his defense;

25. By reason of his expulsion from Organization Defendant through the unlawful acts of Organization Defendants

in direct violation of Plaintiff's rights under the LMRDA Section 411(a)(5)(A)(B)(C), et. seq., Plaintiff has suffered substantial loss and damages as follows:

(a) Plaintiff has been prevented by Defendant from earning a living in the independent-contractor profession of Plaintiff's calling, and plaintiff estimates that by reason of such conduct on the part of Organization Defendant Plaintiff has lost income from his professional practice in the sum of at least $500,000 up to the time of filing this complaint, and will lose a considerable additional sum in the future;

(b) Plaintiff has also sustained loss and damage as a result of the aforesaid wrongful conduct of Organization Defendant, in the loss of value of some one-half century of

goodwill value of Plaintiff's professional practice, which Plaintiff estimates is worth $5,000,000, or more according to proof;

(c) Plaintiff has been shunned and avoided by his former clients and patrons, has been held up to opprobrium by other members of Organization Defendant, has been branded a wrongdoer and blacklisted from further membership which blacklisting has been widely publicized and severely injurious to the standing and reputation as a member, as well as an individual in the community, to Plaintiff's damage in the sum of $5,000,000;

(d) Plaintiff has as a result of the acts of Organization Defendants as hereinabove alleged, lost his life and related insurance policies as a result of his expulsion by Organization Defendants, as alleged above;

(e) Plaintiff has, by reason of the wrongful expulsion by Organization Defendant, lost his right to vote for representatives and other officials in the Defendant Organization, thus depriving Plaintiff of all of the rights inherent in membership in the Organization Defendant.

26. Defendants' actions in causing Plaintiff's expulsion from Organization Defendant(s) were performed willfully and with the malicious intent of injuring Plaintiff and depriving him of his rights under the LMRDA. Plaintiff demands punitive damages against Organization Defendant (State Bar only) in the sum of $20,000,000; if and to the extent that Secretary and President (Defendants Wailes and Anderlini, respectively) have been active in, condoned, or participated in the wrongful act of Organization Defendant, or ratified it or them (with

knowledge of the wrongful nature of such acts of Organization Defendant), Plaintiff demands damages against the said officers and each of them in the amount of $10,000,000.

27. By reason of the foregoing allegations, this Court is empowered under the provisions of Section 102 of the LMRDA, Section 412 thereof, to afford Plaintiff appropriate relief.

WHEREFORE, Plaintiff prays and demands relief as follows:

For CLAIM ONE:

A. For an Order of this Court that Defendants ALLEN BROUSSARD, EDWARD PANELLI, JOHN A. ARGUELLES, DAVID EAGLESON, MILDRED LILLIE, VAINO SPENCER, MARCUS KAUFMAN, MALCOLM LUCAS and each of them be enjoined from enforcing in any manner, including but not limited to the enforcement or required compliance (by Plaintiff) with Rule 955 of California

Rules of Court, the Order of July 13, 1987 and the Order of February 18, 1988 of the Justice Defendants acting as California Supreme Court; (reference to the above-named Justice Defendants, also includes persons acting in their stead or for or on behalf of them and each of them);

For CLAIM TWO:

A. For an award of consequential damages against Defendant Lucas, in the sum of $2,000,000, or more, according to proof;

B. For exemplary and punitive damages against said Defendant Lucas, in the amount of $5,000,000 or more, according to proof;

C. For attorney's fees, in an award against said Defendant Lucas, in the amount of $250,000, or a reasonable amount as determined by this Court; and

For CLAIM THREE:

A. That this Court declare the proceedings taken by the Organization Defendant in connection with and during Plaintiff's trial or proceedings as alleged above, infringed Plaintiff's rights under the provisions of the LMRDA, and that, therefore, the recommended expulsion of Plaintiff member be declared null and void, and Organization Defendant be required to recommend or cause reinstatement of Plaintiff as a member;

B. As an alternative to A. immediately above, that this Court order Organization Defendant to grant a new disciplinary proceeding to Plaintiff (de novo), and afford therein a full and fair hearing (reference to the Organization Defendant herein also includes persons and other organizations acting in concert with, on behalf of, and in furtherance or execution of policies or determinations of Organization Defendant).

C. That, pending the trial of this cause, and on rendition of final judgment herein, this Court enjoin Defendant Organization, its agents, representatives, instrumentalities and officials from interfering with the exercise by Plaintiff of his rights as a member (like any other member in good standing) of Organization Defendant (State Bar of California), and from violating Plaintiff's rights under Section 101(a)(5) of the LMRDA (29 U.S.C. Section 401(a)(5)).

D. 1. Compensatory damages against Organization Defendant (State Bar of California only) of $500,000 sustained up to filing of this Complaint, and additional thereafter, according to proof (Par. 25(a) above);

2. Compensatory damages against Organization Defendant (State

Bar of California only) of $5,000,000 or more, according to proof (Par. 25(b) above);

3. Compensatory damages against Organization Defendant (State Bar of California only) of $5,000,000 (Par. 25 (c) above);

4. Compensatory damages against Organization Defendant (State Bar of California only), in amounts according to proof (Par. 25(d) and (e));

5. Punitive damages against Organization Defendant (State Bar of California) of $20,000,000 (Par. 26);

6. Punitive damages against Mary Wailes and Terry Anderlini and each of them, conditionally, of $10,000,000 (Par. 26 above).

E. As to Claim One, Claim Two, and Claim Three, such further and other

relief as this Court may deem equitable and proper.

Dated: July 22, 1988.

Jerome B. Rosenthal
Plaintiff pro se

APPENDIX

No.	Description
16.	Order Denying Rehearing, U.S. Court of Appeals, Ninth Circuit, September 2, 1987

September 11, 1987

ORDER DENYING REHEARING

L.A. No. 32260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT

F I L E D

SEP 2, 1987

L...P. Gill, Clerk

DEPUTY

JEROME B. ROSENTHAL,
Petitioner

v.

STATE BAR OF CALIFORNIA,
Respondent

Petition for rehearing DENIED.

(S) Lucas
Chief Justice

APPENDIX

No.	**Description**
17.	Order, California Supreme Court, May 27, 1987, Recusing Lucas, C.J.

SUPREME COURT

F I L E D

MAY 27, 1987

Laurence P. Gill, Clerk

Deputy

No. L.A. 32260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

JEROME B. ROSENTHAL

v.

STATE BAR OF CALIFORNIA

Petitioner's objection to the continued participation of Chief Justice Lucas having been presented to him, the Chief Justice on April 29, 1987, recused himself from further participation in this proceeding.

(S) Panelli J.
Acting Chief Justice